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7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION
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11 Curtis Lee ERVIN,
12 Petitioner,

13 v.

14 Kevin CHAPPELLE, Acting Warden of
15 San Quentin State Prison,
16 Respondent.

Case Number 4-0-cv-1228-CW
DEATH-PENALTY CASE

ORDER GRANTING PETITIONER'S
MOTION FOR DISCOVERY OF
RECORDED TELEPHONE CALLS

[Doc. No. 217]

17 In this capital habeas action, the Court granted
18 Petitioner's request to depose fellow condemned prisoner Gary
19 Hines because it determined that "Hines' testimony is relevant to
20 Petitioner's claims of innocence." (Doc. No. 189 at 10.) The
21 deposition took place on September 23, 2011. During the
22 deposition, Hines testified regarding telephone calls between
23 himself and staff attorneys at the California Appellate Project.
24 (Doc. No. 217 at 2.) The calls were not confidential and were
25 recorded by San Quentin State Prison; the recordings are to be
26 destroyed or discarded later this year. (Id. at 3.) In the
27 instant Motion, Petitioner seeks discovery of any audiotapes or
28 transcriptions of pertinent phone calls "[i]n anticipation that

1 Mr. Hines' credibility may be called into question." (Id. at 2.)
2 Neither Hines nor his counsel opposes Petitioner's request,
3 (id.), and an authorization signed by Hines is attached to
4 Petitioner's motion, (id. at 12).

5 Respondent contends that the records Petitioner seeks are
6 not relevant. (Doc. No. 218 at 2-4.) However, recordings of
7 phone calls are plainly relevant to the credibility of testimony
8 regarding the calls, and they well may be relevant to the overall
9 credibility of a person testifying about such calls. Petitioner
10 therefore has established good cause for discovery of pertinent
11 recordings, particularly in light of the fact that the records
12 will be destroyed or discarded if the Court does not order their
13 preservation.¹

14 Accordingly, Petitioner's Motion is granted. San Quentin
15 State Prison shall provide to Petitioner's counsel access to its
16 recorded and transcribed telephone calls, and a copy thereof,
17 between the California Appellate Project and death-row inmate
18 Gary Hines (CDCR No. D-91000) for the period August 1-October 31,
19 2011.

20 IT IS SO ORDERED.

21
22 DATED: 4/11/2012



23 CLAUDIA WILKEN
24 United States District Judge

25 ¹ Respondent also argues that the admissibility of the Hines
26 deposition has not been established and that the deposition testimony
27 is not properly before the Court in light of Cullen v. Pinholster, 563
28 U.S. ___, 131 S. Ct. 1388 (2011). (Doc. No. 218 at 2-3.) However,
there is no support for the assertion that the admissibility of
evidence is required for relevant discovery, and the Court already has
determined that, "[c]ontrary to Respondent's contention, Pinholster
does not bar discovery in this instance," (Doc. No. 189 at 10).